

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1375 of 1996

with

CIVIL REVISION APPLICATION No 1568 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No
 2. To be referred to the Reporter or not? No
 3. Whether Their Lordships wish to see the fair copy
of the judgement? No
 4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?
No
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AMTHA DHANJI

Versus

SUBHACHANDRA CHIMANLAL DALWADI

Appearance:

MR CB DASTOOR for Applicant.

MR MB GANDHI for Respondent.

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 30/09/96

ORAL JUDGEMENT

Rule. Learned advocate Mr M.B. Gandhi appearing
for the respondent waives notice of Rule in both the
matters and with consent of the concerned advocates, the
matters are finally heard today and they are finally
decided by a common order.

By way of these applications, the applicant has challenged an order passed below Exhs. 10 and 12 in Civil Appeal No. 40 of 1985 by the Appellate Bench of Small Causes Court on 9th November, 1995. By virtue of the said order, applications given by the applicant for condonation of delay and for bringing heirs on record of Civil Appeal No. 40 of 1985 were rejected.

Learned advocate Mr Dastoor appearing for the applicant has submitted that the applicant is an illiterate person who did not know anything about the legal formalities which he had to perform upon death of his father, who was an appellant in the abovereferred appeal. In the circumstances, delay of 9 years and 8 months was caused and he had prayed that the delay caused in bringing heirs on record should be condoned and the abatement should be set aside.

In the course of arguments, learned advocate Mr Dastoor has relied upon judgments of the Honourable Supreme Court reported in AIR 1985 SC pg.1, AIR 1985 SC 606 and AIR 1983 SC 355. He has prayed that in the interest of justice, the delay be condoned, the abatement be set aside and the heirs be brought on record.

In reply to the above referred submissions made by Mr Dastoor, learned advocate Mr M.B. Gandhi has submitted that in fact the application given by the applicant before the lower Appellate Court contains certain incorrect statements. It is specifically stated in the said application that the applicant had never contacted his lawyer after admission of the appeal and he did not know that the fact with regard to death of his father was to be reported to the lawyer. Of course, it is clear that the said averment made in the application is not correct for the reason that in fact on two occasions the applicant had deposited amount of rent in the appellate Court and for that purpose he must have contacted his lawyer. Moreover, his lawyer Mr H.B. Thakkar has filed an affidavit in Civil Application No. 7517 of 1996 in Civil Revision Application No. 1375 of 1996 in this Court stating that the applicant had approached him (the advocate) on several occasions during pendency of Civil Appeal No. 40 of 1985.

In the above referred circumstances, learned advocate Mr Gandhi has submitted that the delay should not be condoned and the abatement should not be set aside.

Looking to the fact that the applicant is an

illiterate who hardly knows to sign his name and in view of observations made by the Honourable Supreme Court in the judgments referred to hereinabove, it appears that some lenient view should be taken in the matter. It appears that if the respondent-landlord is awarded costs, the respondent would also be adequately compensated as he has incurred additional expenditure due to this litigation which is an outcome of a mistake of the applicant and the applicant would also get a chance to continue the litigation on merits.

In the above circumstances, a sum of Rs.3,000/(Rupees Three thousand only) is awarded by way of costs to the respondent. The said amount shall be deposited with this Court on or before 31st October, 1996 and it would be open to the respondent to withdraw the said amount.

In the circumstances, the abatement is set aside and both the applications are allowed. Rule is made absolute in both the applications. It is also directed that Civil Appeal No. 40 of 1985 should be heard as expeditiously as possible.

sundar./